



NEW YORK CITY FAMILY COURT JUDGES ASSOCIATION

OFFICERS:

HON. ERIK S. PITCHAL
PRESIDENT
Kings County Family Court
330 Jay Street
Brooklyn, N.Y. 11201
Phone: 347-401-9870
epitchal@nycourts.gov

HON. KAREN M.C. CORTES
VICE-PRESIDENT
Bronx County Family Court
900 Sheridan Ave.
Bronx, NY 10451
Phone: 718-618-2200
kcortes@nycourts.gov

HON. MARGARET MORGAN
TREASURER
Queens County Family Court
151-20 Jamaica Ave.
Jamaica, NY 11432
Phone: 718-298-0204
mmorgan@nycourts.gov

**HON. ELIZABETH L.
FASSLER**
SECRETARY
Queens County Family Court
151-20 Jamaica Ave.
Jamaica, NY 11432
Phone: 718-298-0204
efassler@nycourts.gov

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The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224
Legislative.Secretary@exec.ny.gov

Re: Increasing Support for Attorneys for Children

March 24, 2023

Dear Governor Hochul:

The New York City Family Court Judges Association strongly supports the request of various organizations who provide attorney-for-the-child (“AFC”) services in our court for an enhancement to the judiciary budget for fiscal year 2024. These organizations play a critical role in ensuring the accurate and timely disposition of the most important cases in our state, those involving the safety and custody of children. Reliant on state funds to do their work, the AFC agencies face an exodus of staff and insurmountable hurdles to recruitment, and they are desperate for budgetary assistance.

Under the Family Court Act and governing case law, children in a variety of Family Court proceedings are statutorily entitled to counsel, paid for out of state funds appropriated to the Unified Court System. In New York City, the Office of Court Administration has contracts with three different agencies to provide AFC services. All of them, along with their out-of-NYC counterparts, report a struggle to recruit and retain staff under the existing funding structure. Staff attorneys end up carrying caseloads far in excess of what is reasonable. The result is a crisis of justice in Family Court, where lack of properly-resourced AFCs infringes daily on the fundamental constitutional rights of indigent children, most of whom are Black and Brown.

Domestic violence, mental health, substance abuse – these are the typical issues present in our cases. Our laws demand that children as well as parents in Family Court receive capable, competent representation, but rights are only meaningful if they are properly implemented. The right to counsel is ephemeral if the lawyer has too many cases to be able to attend to the basic duties of lawyering. See Strickland v. Washington, 466 U.S. 668, 686 (1984); Nicholson v. Williams, 203 F.Supp.2d 153, 239 (E.D.N.Y. 2002). Equitable access to justice exists only when all parties have an advocate with the time and resources to provide effective representation.

When AFC's caseloads are too high, it means children's fundamental constitutional rights may be at risk. Kenny A. v. Perdue, 356 F.Supp.2d 1353, 1361 (N.D. Ga. 2005). The national caseload standard for AFCs currently provides that lawyers for children should carry no more than 40-60 clients at any given time.¹ The AFC organizations report that they are not able to maintain this caseload limit given the dwindling numbers of lawyers accepting assignments. As more staff depart, the caseloads of those who remain get even higher, causing an ever-worsening burnout spiral. With unmanageable caseloads, the basic standards of practice cannot be met, despite the best intentions and herculean efforts of these dedicated lawyers. Here are some examples:

Meet with clients before court appearances, including the initial appearance²:

Because of their staggering caseloads, AFCs are often unable to meet with their clients before court appearances. In Family Court, time on the record is the most precious commodity, and when an attorney has not met with the client in advance, the basic opportunity for meaningful advocacy is lost.

Maintain contact with clients outside of court³: When adolescent clients are unable to reach their lawyers to discuss their case, they become understandably frustrated and their confidence in the justness of the Family Court system erodes. The lack of ongoing communication with the attorney can also have grave consequences for the outcome of their case when the AFC is not fully aware of all relevant facts before walking into a hearing.

Engage in pre-trial discovery practice⁴: When AFCs are stretched too thin and spend most of their workdays on the record, they are unable to attend to the details of pre-trial preparation, including the crucial step of requesting and analyzing discovery materials.

Independently investigate the case⁵: We often see one party make a claim on the record asserting that another party failed to do something they should have done; the accused party retorts that the assertion is not true. Frequently, these claims can be corroborated (or rejected) based on the existence of documentary evidence. For example, the Probation Department might

¹ See National Association of Counsel for Children, "Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings" (2021), available at <https://www.naccchildlaw.org/news/news.asp?id=591880>.

² NACC Recommendation I.

³ NACC Recommendation II.

⁴ NACC Recommendation VI.

⁵ NACC Recommendation VI.

claim that a child in a delinquency case has not been attending school. Too often, AFCs are too strained from their caseload to independently investigate these sorts of claims, and are left merely to parrot their client's on-the-record denials. If their workload were more manageable, attorneys could obtain third-party discovery which might corroborate their client's story – or, on the other hand, give them the basis for a frank counseling session with the client. Instead, clients with favorable facts might not prevail, and some children are left with the impression that their lawyer is not fighting for them.

We note that research shows that law students of color are more likely to carry a higher student loan debt.⁶ It follows that young attorneys of color who would otherwise be interested in doing Family Court work turn down staff positions at AFC agencies because the pay is too low. As Family Court judges we support increasing the diversity of the Family Court bar, not only because it is important for children of color to see AFC's who look like them, but because the diverse bar of today represents the diverse bench of tomorrow.

Research also demonstrates that effective AFCs assist in getting children into permanent homes more quickly.⁷ Lawyers help older adolescents move from foster care into adulthood safely and successfully. AFCs secure for their child-clients appropriate education, sibling contact, medical treatment, and necessary therapy. Through this work, AFC's help prevent the poor outcomes faced by many children in foster care. Additionally, children are more likely to accept the outcome of a case—even if it is not what they wanted—if they had a voice in the process through a lawyer.⁸

The institutional providers of AFC services in New York have proven time and time again their effectiveness at advancing the aims of our Family Court system. They also exemplify national standards of legal service delivery, as each of them fully integrates social workers and paraprofessionals into their representation model.⁹ We strongly urge you to take the necessary steps to provide them adequate funding.

⁶ Richard Pallardy, "Racial Disparities in Student Loan Debt," Aug. 27, 2019, [available at https://www.savingforcollege.com/article/racial-disparities-in-student-loan-debt](https://www.savingforcollege.com/article/racial-disparities-in-student-loan-debt).

⁷ Andrew Zinn and Jack Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, available at <https://www.issuelab.org/resources/1070/1070.pdf>.

⁸ Erik S. Pitchal, *From Paternalism to Process: Reflections From the Bench on 40 Years of American Child Advocacy*, 39 CHILDREN'S LEGAL RTS. J. 1, 10-11 (2019), available at https://www.childrenslegalrightsjournal.com/childrenslegalrightsjournal/volume_39_issue_1?articleId=1465041&pg=6#pg6.

⁹ Family Justice Initiative, *Making the Legal System Work For Children and Parents* (finding that interdisciplinary practice model is one of six attributes of high-quality legal representation in family law), available at <https://familyjusticeinitiative.org/model/high-quality-representation/>; see also Lucas Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 CHILDREN AND YOUTH SVCS. R. 42 (2019), available at <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

Please feel free to contact me should you wish to discuss the Association's position on this matter in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Pitchal', written in a cursive style.

Erik S. Pitchal
President